INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statute and regulations involved	2
Statement	2
Specification of errors to be urged	9
Argument	9
Conclusion	18
Appendix A	19
Appendix B	22

CITATIONS

Cases:

Bradshaw v. *Commissioner*, 150 F. 2d 918	17
Burnet v. *Leininger*, 285 U. S. 136	10
Central Nat. Bank v. *Commissioner*, 141 F. 2d 352	15
Choate v. *Commissioner*, 324 U. S. 1	13
Commissioner v. *Court Holding Co.*, 324 U. S. 331	10, 13, 17
Commissioner v. *Harmon*, 323 U. S. 44	10
Commissioner v. *Scottish American Co.*, 323 U. S. 119	13
Dobson v. *Commissioner*, 320 U. S. 489	10, 13
Doll v. *Commissioner*, 149 F. 2d 239, certiorari denied October 8, 1945	17
Douglas v. *Willcuts*, 296 U. S. 1	10
Grant v. *Commissioner*, 150 F. 2d 915	17
Griffiths v. *Commissioner*, 308 U. S. 355	10, 15
Harrison v. *Schaffner*, 312 U. S. 579	10
Helvering v. *Clifford*, 309 U. S. 331	10, 17
Helvering v. *Elias*, 122 F. 2d 171	15
Helvering v. *Eubank*, 311 U. S. 122	10
Helvering v. *Horst*, 311 U. S. 112	10
Higgins v. *Smith*, 308 U. S. 473	10
Lorenz v. *Commissioner*, 148 F. 2d 527, petition for rehearing denied October 15, 1945	13, 17
Lucas v. *Earl*, 281 U. S. 111	10
Lusthaus v. *Commissioner*, No. 263, this Term	9
Mead v. *Commissioner*, 131 F. 2d 323, certiorari denied, 318 U. S. 777	17
Miller v. *Commissioner*, 150 F. 2d 823	17
United States v. *Joliet & Chicago R. Co.*, 315 U. S. 44	10
Wilmington Co. v. *Helvering*, 316 U. S. 164	13

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Statutes:

Internal Revenue Code: Page

Sec. 11 (26 U. S. C. 11) 19
Sec. 22 (26 U. S. C. 22) 19
Sec. 181 (26 U. S. C. 181) 13, 19
Sec. 182 (26 U. S. C. 182) 19
Sec. 183 (26 U. S. C. 183) 20
Sec. 188 (26 U. S. C. 188) 20
Sec. 3797 (26 U. S. C. 3797) 20

Miscellaneous:

Treasury Regulations 103, Sec. 19.22 (a)–1 21

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 317

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

FRANCIS E. TOWER

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The findings of fact and opinion of the Tax Court (R. 10–20) are reported at 3 T. C. 396. The opinion of the Circuit Court of Appeals (R. 60–65) is reported at 148 F. 2d 388.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on April 2, 1945 (R. 59), and a petition for rehearing was denied on May 14, 1945 (R. 66). The petition for a writ of certiorari was filed on August 13, 1945, and granted on October 8, 1945. (R. 66.) The jurisdiction of this Court

rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1945.

QUESTION PRESENTED

Whether the court below erred in reversing the decision of the Tax Court that the respondent's wife was not a partner with him for purposes of determining his liability for income tax, and that the income attributed to his wife by a partnership agreement was includible in his gross income as defined by Section 22 (a) of the Internal Revenue Code.

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the statute and regulations are set forth in Appendix A, *infra*.

STATEMENT

The Tax Court found the following facts (R. 11–15):

For 28 years the respondent had been engaged in the business of the R. J. Tower Iron Works, and since the death of his father in 1927, had managed and operated the business. (R. 11.) During the tax years involved, the fiscal years ended July 31, 1940, and July 31, 1941 (R. 10), the business had an average of from 40 to 60 employees, gross assets of approximately $200,000, and an average steel inventory of approximately $50,000. It manufactured sawmill machinery, which was sold through dealers, and metal stamp-

ings, which were sold directly to manufacturers of refrigerators and stoves. (R. 11.)

In September of 1933, the business was incorporated as The R. J. Tower Iron Works, Inc., with 500 shares of capital stock having a par value of $100 each. The respondent received 425 shares; one Amidon, 50 shares; and one Lawrance, 25 shares. The bylaws required that a director of the corporation hold shares of its stock, and all three became directors. The respondent also became president of the corporation, and Amidon became the secretary and treasurer. In the early part of 1934, about six months after formation of the corporation, the respondent purchased the shares of Lawrance, who then severed his connections with the corporation. The respondent's wife was made a director and vice president after the respondent gave her five shares immediately upon purchasing Lawrance's stock. Thereafter the respondent owned 445 shares; his wife, five shares; and Amidon, 50 shares. The ownership of the shares remained the same until August, 1937. (R. 11.)

In July of 1937 it appeared that the corporation had realized substantial profits in that year, and the respondent talked with his wife and Amidon about dissolving the corporation and setting up a partnership. Amidon, who had worked in the business for a long time, kept the books of the company under the respondent's supervision. He had no objection to the formation of

a partnership and believed that the change would not create any great risk as far as he personally was concerned. Consultations were then held with the respondent's attorney and with his accountant, who took care of his tax matters. They were all of the opinion that the formation of a partnership would result in tax savings and eliminate the necessity of filing corporate tax returns. (R. 11–12.)

It was decided that the respondent should transfer stock of the corporation in order that his wife might contribute a substantial share of the partnership capital. On August 25, 1937, he transferred to her 190 shares of his stock. The transfer was recorded on the corporate books and a new stock certificate was issued and delivered to the wife, but the transfer was conditioned upon her placing the corporate assets represented by the stock into the new partnership. The respondent paid a gift tax of $213.44 on the transfer. (R. 12.)

Three days after this transfer, all of the assets and liabilities of the corporation were transferred to a partnership formed under an agreement entered into on the same day between the respondent, his wife and Amidon. (R. 12.) The agreement is reproduced in Appendix B, *infra*, pp. 22–28.

Under the partnership agreement, the business was to be carried on under the firm name of R. J. Tower Iron Works, with the respondent

and Amidon as general partners, and with the wife as a limited partner. The general partners were given exclusive voice in the management and control of the business, and were authorized to determine their own salaries. In case of disagreement, these matters were to be decided by the majority of the general partners in capital interest [the respondent]. The net profits of the business were to be distributed at such times and in such manner as the general partners might agree. (R. 12.)

All partners were to share in the profits in proportion to their respective capital interests, stated to be $81,600 for the respondent, $62,400 for his wife, and $16,000 for Amidon. Losses were to be shared similarly except that the wife was not to be liable in excess of her stated capital interest. The partnership was to continue for a period of 20 years, unless sooner terminated by a decision of a majority of the general partners in capital interest. (R. 12.)

A certificate of limited partnership was filed with the clerk of the county court, and notification of the liquidation of the corporation and the formation of the partnership was given to the banks with which the corporation had transacted business. (R. 12.)

Accounts of the partnership were maintained on a fiscal year ending August 31, and capital accounts were opened on the books showing amounts contributed by each party. Distributive shares of

the profits were credited either to the capital account or to the drawing account of each, and withdrawals were charged to the respective drawing accounts. (R. 13.)

Amidon continued to perform for the partnership the bookkeeping work which he had performed for the corporation. Early in 1938 his responsibilities and duties increased with an increase in business, and respondent and his wife were of the opinion that he should have a larger share in the profits. Accordingly, and on September 1, 1938, his share was increased from 10 percent as stated in the partnership agreement to 25 percent, and the shares of the respondent and his wife decreased, respectively, from 51 percent to 42½ percent and from 39 percent to 32½ percent. This redistribution was agreed on orally; the partnership agreement and certificate on file with the county clerk were not formally amended. The respective capital contributions of the parties remained the same. At the time of the oral agreement for redistribution of the profits, it was also orally agreed that the respondent and Amidon would not in the future take any salaries for their services. (R. 13.)

Although the respondent continued to render to the partnership the same services he had rendered to the corporation, he received no salary after Amidon's share of profits was increased in September of 1938. The partnership carried on

the same business as the corporation, and had the same customers. (R. 15.)

The last return filed by the corporation, for the fiscal year ended August 31, 1937, reported compensation of $11,511.20 paid to the respondent for services rendered as president, and $5,450.44 paid to Amidon as secretary and treasurer. The wife was not actively engaged in the business of the corporation, and received no salary from it. (R. 14.)

The partnership return for the fiscal year ended August 31, 1938, reported a net income of $15,919.85. Of this amount, salaries of $7,761.20 and $3,700.44 were paid to the respondent and Amidon, respectively; and distributive shares of the balance were ascribed to the respondent, Amidon, and the respondent's wife in the respective amounts of $2,273.69, $445.82, and $1,738.70. (R. 13.)

For the fiscal year ended August 31, 1939, the respondent's share of income as shown by the partnership return was $8,710.74; his wife's, $6,661.16; and Amidon's, $5,123.97. The corresponding figures for the following fiscal year were $18,253.51, $13,958.57; and Amidon's, $10,737.36. (R. 14.)

The respondent's wife withdrew $2,032.80 in the fiscal year of the partnership ended August 31, 1939, and $5,000 in the following fiscal year. (R. 13.) Some of the money she placed in her own

savings and checking accounts and some she placed in a box at home to which both she and the respondent had the combination. Since the bank holiday in 1933, the respondent had kept all his money and papers in this safe, although he used a separate box. Before the execution of the partnership agreement, the respondent had given his wife a regular allowance of approximately $75 a week for household expenses. Thereafter, and throughout the taxable years, he continued to give his wife an allowance of $75 a week for household expenses and for her support, although she paid for some of her own clothes. The respondent also paid the expenses of a daughter in college. During the year 1940, the respondent and his wife built and furnished a cottage at Baldwin Lake, the respondent contributing approximately $2,000 and the respondent's wife contributing $3,000. During that year the wife also repaid to him $1,403.88, which represented expenditures made by him for her income tax and certain other expenses. Each paid half the price of a $100 war bond which they purchased each month. (R. 14–15.)

The Tax Court found that since the transfer of the 190 shares to the respondent's wife was conditional, there had been no valid gift thereof to her, and hence that she had not made the capital contribution asserted by the respondent to establish her status as a partner for purposes of the federal income tax. (R. 17–18.) The Tax Court

held that there had been no real partnership between the respondent and his wife for the conduct of a business enterprise, and that the partnership profits credited to her during the tax years involved were taxable to the respondent. (R. 20.)

The Circuit Court of Appeals reversed, holding that the profits credited to the wife's account were not taxable to the respondent, on the grounds that he had made a gift of the 190 shares which became complete on formation of the partnership if not before; and that by contributing the assets of the corporation represented by the shares, she attained the status of a partner. (R. 62–65.)

SPECIFICATION OF ERRORS TO BE URGED

The court below erred in reversing the decision of the Tax Court, to the effect that the respondent was chargeable with the income ascribed to his wife under the so-called partnership arrangement.

ARGUMENT

1. This case, like *Lusthaus* v. *Commissioner*, No. 263, raises the question whether a husband may avoid tax on income derived from a business, attributable both to his personal efforts and his invested capital, by the device of making his wife a "partner" in the enterprise. The applicable principles are discussed in our brief in the *Lusthaus* case, and we respectfully refer the Court thereto for a full statement of our position.

As is shown in that brief, this Court has re-

peatedly held that one may not relieve himself of tax by anticipatory arrangements whereby his earnings or income subject to his control are deflected within the family group. *Lucas* v. *Earl*, 281 U. S. 111; *Burnet* v. *Leininger*, 285 U. S. 136; *Douglas* v. *Willcuts*, 296 U. S. 1; *Helvering* v. *Clifford*, 309 U. S. 331; *Helvering* v. *Horst*, 311 U. S. 112; *Helvering* v. *Eubank*, 311 U. S. 122; *Harrison* v. *Schaffner*, 312 U. S. 579; cf. *Higgins* v. *Smith*, 308 U. S. 473; *Griffiths* v. *Commissioner*, 308 U. S. 355; *United States* v. *Joliet & Chicago R. Co.*, 315 U. S. 44; *Commissioner* v. *Court Holding Co.*, 324 U. S. 331; *Commissioner* v. *Harmon*, 323 U. S. 44. It is the essence of those decisions that although the arrangement involved may be legally effective under applicable state law, the income nevertheless remains taxable to the assignor, etc., under the Federal statute.

These principles are fully applicable to family partnership cases where the wife in effect brings no new capital or services to the enterprise. The partnership form should have no greater potency than the irrevocable assignment or trust devices that have already been declared ineffective for re-routing tax liability within the family in like circumstances.

Since the Tax Court correctly applied these principles here, it was error for the Circuit Court of Appeals to reverse. Cf. *Dobson* v. *Commissioner*, 320 U. S. 489.

2. The facts disclosed by the record amply

justified the result reached by the Tax Court. The Tax Court found, in accordance with the concession of the respondent (R. 15), that the wife contributed no services to the business; and, furthermore, that she had not made the contribution of capital relied upon by the respondent to establish her status as a partner.

The respondent maintained that his wife had become a partner by contributing to the capital of a partnership, assets of a corporation represented by shares of its capital stock which he had given to her. The corporation had been formed in 1933 to operate an iron works with which the respondent had been engaged for many years, and which he had managed and operated since the death of his father in 1927. (R. 11.) Of the 500 shares of the capital stock of the corporation, the respondent received 425 shares; the bookkeeper Amidon, 50 shares; and one Lawrance, 25 shares. (R. 11.) About six months later the respondent purchased Lawrance's stock, and gave five shares to his wife, apparently to qualify her as a director in the corporation. (R. 11.) When it appeared that the corporation would have considerable profits in 1937, consultations were held with the attorney and the accountant who handled the respondent's tax matters. (R. 11–12.) It was decided that tax savings could be achieved by conducting the business as a partnership, and that the respondent should transfer stock to his wife so that she might contribute a "substantial" share

of the partnership capital.[1] (R. 12.) Accordingly, on August 25, 1937, the respondent transferred to his wife 190 of his 445 shares of stock in the corporation, upon condition that she would place in the partnership the corporate assets which they represented. (R. 12.) The respondent himself testified that the only purpose of the transfer was "to determine her interest in the partnership"; that it was made "solely for this changeover." (R. 38.) The liquidation of the corporation, execution of the partnership agreement, and transfer of the corporate assets and liabilities to the partnership, all occurred on the third day after the transfer of the 190 shares to the wife. (R. 12.)

This evidence certainly provides a rational basis for the finding of the Tax Court that the transfer of the 190 shares of stock to the wife and the transfer of the corporate assets represented by that stock to the partnership were but steps in a larger transaction which did not involve any real contribution of capital by the wife. The court below committed plain error in substituting for

[1] The respondent has in effect conceded that the corporate assets represented by the five shares given to his wife in 1933 could not have amounted to a substantial contribution to the partnership capital. He has not seen fit to argue the dubious factual question (R. 35–36) whether the five shares were owned outright by her and contributed to the capital of the partnership, but has been content to permit his case to turn on the effect of the dealings in the 190 shares.

the finding of the Tax Court its own view that there had been a gift of the 190 shares to the wife, followed by a contribution of her own capital. *Commisioner* v. *Court Holding Co., supra; Dobson* v. *Commissioner, supra; Commissioner* v. *Scottish American Co.*, 323 U. S. 119; *Choate* v. *Commisioner*, 324 U. S. 1; *Wilmington Co.* v. *Helvering*, 316 U. S. 164. In this connection it may be noted that 11 days after it decided the present case, the court below sustained our position on this matter in the substantially similar case of *Lorenz* v. *Commissioner*, 148 F. 2d 527, petition for rehearing denied October 15, 1945.[2]

The Tax Court's valid findings that the wife had made no substantial contribution of capital or services, of themselves required that she be held not to have been a partner within the meaning of Section 181 of the Internal Revenue Code (Appendix A, *infra*). Further circumstances confirm this decision, and provide abundant basis for the additional findings by the Tax Court that as to the wife the partnership arrangement was

[2] While the two decisions are inconsistent, they do not represent inconsistency on the part of any individual judge. Judges Simons and McAllister, who comprised the majority below, did not participate in the *Lorenz* case. Judge Martin dissented below, and in the *Lorenz* case voted with Judges Allen and Hamilton, who did not participate herein. Thus, of the five judges who recently considered this issue in that court, only two, the majority herein, have voted against the Government's position.

but a means of sharing the respondent's earnings from his personal services and his property, and that the withdrawals from profits credited to her represented merely an allocation of income used for the benefit of the family.

The wife was to share in the profits on an equal footing with the respondent and Amidon, although those two were required to devote their full time and energies to the business and were subject to unlimited liability for any losses, while she was not required to contribute any services, and was not liable for losses in excess of her capital interest. (R. 12; Partnership Agreement, par. 5, 13, Appendix B, *infra*, pp. 23–24, 28.) In the words of the Tax Court, this arrangement was "unusual and unreal, especially in view of her limited liability." (R. 20.) On the other hand, the respondent was to have the exclusive voice in the management and control of the business (R. 12; Partnership Agreement, par. 8, Appendix B, *infra*, p. 26); and even power to determine whether, and to what extent, the wife might become entitled to share in the profits, by means of his power under the partnership agreement to fix his own salary in diminution of the profits to be distributed (R. 12; Partnership Agreement, par. 5, 8, Appendix B, *infra*, pp. 23–24, 26). Moreover, her share of the profits was to be distributed at the times and in the manner determined by himself and Amidon, who doubtless would acquiesce with

him.[3] (R. 19; Partnership Agreement, par. 9, Appendix B, *infra*, pp. 26–27.) And for a period of 20 years only the respondent had power to bring about dissolution. (R. 12; Partnership Agreement, par. 2, Appendix B, *infra*, p. 23.)

The unreality of the wife's asserted partnership status, and the true nature of the arrangement as a device for the sharing of the respondent's income, are further shown by what actually occurred during the tax period. The respondent received no salary, although he continued the management and operation of the business, and its profits were in large measure the result of his personal services. (R. 15, 18.) In contrast, the compensation for Amidon's less important services was fixed by increasing to 25 percent his share of the profits, and correspondingly decreasing the shares of the respondent and his wife. (R. 13.) The result of all this was that Amidon's share as a partner during the first year of the partnership which bears on the tax in dispute was approximately the same as the compensation which he had received from the corporation during the last year of its existence, while there was allocated between the respondent and his wife an amount somewhat

[3] Compare the cases holding that appointment of a servile trustee is a significant factor in determining whether the grantor has retained economic ownership. *Central Nat. Bank* v. *Commissioner*, 141 F. 2d 352 (C. C. A. 6th); *Helvering* v. *Elias*, 122 F. 2d 171 (C. C. A. 2d); cf. *Griffiths* v. *Commissioner*, 308 U. S. at pp. 357–358.

greater than the amount received by the respondent as compensation from the corporation during the last year of its existence. (R. 13–14.)

The wife was credited with a share in the business profits on an equal footing with respondent, although she rendered no services to the business. (R. 13–15, 20.) During each fiscal year of the partnership she made substantial withdrawals of business profits, but since she had destroyed the checks reflecting these withdrawals, the purposes for which they had been made could be ascertained only with respect to those made in 1940, which were the greatest in total amount. (R. 13, 20.) It appeared that the greater part thereof had been expended to purchase and furnish a family cottage, and for the purchase of war bonds, together with the respondent; and that all but a small part of the balance had been used to reimburse him for taxes and other expense which he had paid for her. (R. 14–15.) As the Tax Court observed, the former items were of a sort usually defrayed by the husband for the welfare of his family; and "the withdrawals by the wife * * * were merely for the reallocation of income within the family to be used for the benefit of the family." (R. 20.)

It is apparent, then, that the wife became a partner in name and on paper only. The arrangement gave the respondent every significant attribute of control of both income and corpus; he was given exclusive control of the business, and power to

determine the amount, time and manner of the wife's participation in the profits. And as far as could be ascertained by the Tax Court, the profits which he permitted the wife to receive were employed to meet expenses which he himself would normally have incurred for his family. On the record here it is inconceivable that the respondent could have considered himself any poorer after the making of the partnership arrangement. Cf. *Helvering* v. *Clifford*, *supra*, pp. 335–336. Plainly the Tax Court was not bound as a matter of law to accord tax consequences to this arrangement. *Mead* v. *Commissioner*, 131 F. 2d 323 (C. C. A. 5th), certiorari denied, 318 U. S. 777; *Lorenz* v. *Commissioner*, *supra*; *Doll* v. *Commissioner*, 149 F. 2d 239 (C. C. A. 8th), certiorari denied October 8, 1945; *Miller* v. *Commissioner*, 150 F. 2d 823 (C. C. A. 2d); *Grant* v. *Commissioner*, 150 F. 2d 915 (C. C. A. 10th); *Bradshaw* v. *Commissioner*, 150 F. 2d 918 (C. C. A. 10th); *Commissioner* v. *Court Holding Co.*, *supra*; *Helvering* v. *Clifford*, *supra*, p. 336.

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[1] In the *Miller* case the Circuit Court of Appeals said of a family partnership arrangement predicated upon a gift of capital (p. 824):

"* * * the completeness with which the forms were observed is of no significance, for it is precisely what we should expect, if they were to be only forms. * * * Unless we must allow ourselves to be fobbed off by an elaborate documentary paraphernalia, because it is completely carried out, it is impossible to upset the finding. Indeed, it shows a curious trust in the efficacy of the written word, that the appeal should have gone beyond the Tax Court."

CONCLUSION

The decision below is erroneous and should be reversed.

Respectfully submitted.

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SAMUEL O. CLARK, JR.,
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DECEMBER 1945.

APPENDIX A

Internal Revenue Code:

SEC. 11. NORMAL TAX ON INDIVIDUALS.

There shall be levied, collected, and paid for each taxable year upon the net income of every individual a * * * tax * * *. (26 U. S. C. 11.)

SEC. 22. GROSS INCOME.

(a) *General definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service * * * of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * *. (26 U. S. C. 22.)

SEC. 181. PARTNERSHIP NOT TAXABLE.

Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity. (26 U. S. C. Sec. 181.)

SEC. 182. TAX OF PARTNERS.

In computing the net income of each partner, he shall include, whether or not distribution is made to him—

* * * * *

(c) His distributive share of the ordinary net income or the ordinary net loss of the

partnership, computed as provided in section 183 (b). (26 U. S. C. 182.)

SEC. 183. COMPUTATION OF PARTNERSHIP INCOME.

(a) *General rule.*—The net income of the partnership shall be computed in the same manner and on the same basis as in the case of an individual, except as provided in subsections (b) and (c). (26 U. S. C. 183.)

SEC. 188. DIFFERENT TAXABLE YEARS OF PARTNER AND PARTNERSHIP.

If the taxable year of a partner is different from that of the partnership, the inclusions with respect to the net income of the partnership, in computing the net income of the partner for his taxable year, shall be based upon the net income of the partnership for any taxable year of the partnership (whether beginning on, before, or after January 1, 1939) ending within or with the taxable year of the partner. (26 U. S. C. 188.)

SEC. 3797. DEFINITIONS.

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

* * * * *

(2) *Partnership and Partner.*—The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

* * * * *

(26 U. S. C. 3797)

Treasury Regulations 103, promulgated under the Internal Revenue Code:

> SEC. 19.22 (a)–1. *What included in gross income.*—Gross income includes in general compensation for personal and professional services, business income, profits from sales of and dealings in property, interest, rent, dividends, and gains, profits, and income derived from any source whatever, unless exempt from tax by law. (See sections 22 (b) and 116.) In general, income is the gain derived from capital, from labor, or from both combined. * * *

APPENDIX B

LIMITED PARTNERSHIP AGREEMENT OF R. J. TOWER IRON WORKS[1]

THIS AGREEMENT made as of the 28th day of August, 1937, by and between Francis E. Tower, Harvey A. Amidon and Hazel I. Tower, witnesseth:

WHEREAS, the parties hereto were all of the stockholders of a corporation heretofore existing and known as R. J. Tower Iron Works, a Michigan corporation, the term of existence of which expires on August 30, 1937; and whereas the parties desire and intend to carry on and continue the business in which said corporation was engaged, taking over all of the assets of said corporation subject to its indebtedness, and form a limited partnership to that end and for that purpose;

NOW, THEREFORE, IT IS HEREBY AGREED that a limited partnership shall be and is being formed by the parties hereto in accordance with the terms of this agreement.

1. The name and style of said limited partnership shall be R. J. Tower Iron Works. Its place of business shall be Greenville, Montcalm County, Michigan, and it will carry on the business of a general foundry and machine shop, the manufac-

[1] This partnership agreement was introduced as Exhibit 8 in the proceedings before the Tax Court. (R. 23.) The Circuit Court of Appeals ordered (R. 56-57) that the exhibits so introduced need not be fully set forth in the transcript to be certified by the Tax Court, but might be transmitted to the Circuit Court of Appeals, and that either party would have the right to print as an appendix to his brief such portions of any of the exhibits as he might see fit.

turing and selling of sawmill machinery, road machinery, stampings of steel and articles composed of metal and wood, or metal or wood alone, and any business incidental thereto.

2. The partnership shall exist for the term of twenty years unless sooner terminated, as it may be by a decision of a majority in interest of the partnership capital, including the capital interest of limited and the assignees of limited partners. If the termination of the partnership is so decided upon, the partners so deciding shall give notice of their decision to the remaining partners, and offer their interests in the partnership for sale under and pursuant to the provisions of other paragraphs of this agreement.

3. The said Francis E. Tower and Harvey A. Amidon shall be general partners and the said Hazel I. Tower shall be a limited partner.

4. The capital of the partnership shall be represented by and shall consist of all of the assets and business of said former corporation, the R. J. Tower Iron Works; all of which assets and business are to be this day conveyed, assigned and transferred by said corporation to said partnership at their fair value subject to the liabilities of such corporation, which liabilities this partnership assumes, and the amount contributed by each of said partners as his or her proportionate share of such assets and business is as follows:

Francis E. Tower	$81,600.00
Harvey A. Amidon	16,000.00
Hazel I. Tower	62,400.00

5. Each of the partners shall receive, by reason of his or her contribution, such share of the profits of the partnership business, and shall bear such share of the losses as his or her aforesaid con-

tribution to the partnership capital bears to the total partnership capital aforesaid, and the interest in and share of each partner, both general and limited, in the partnership capital shall at all times be the same proportionate share thereof whether the partnership capital hereafter increases or diminishes in amount or value as a result of business operations. The limited partner shall, in no event, be liable for or subject to any loss or losses whatsoever in excess of the amount of the capital contributed by her to the capital of the partnership. Nothing herein contained is intended to prevent the payment of salaries and bonuses to the general partners for services to be rendered by them in the active *man-agreement* [sic] of the business of the partnership, such salaries and bonuses to be deducted from the earnings of the partnership before the profits available for distribution to all of the partners are determined.

6. The partnership shall cease in the event of the death, retirement or incapacity to act of any partner. If at any time any limited partner desires to sell his or her interest in the partnership business and property, such partner shall first offer the same to the remaining limited partner or partners, if any, and if they do not desire to buy the same may be sold at will. If they or any of them desire to buy and the price to be paid cannot be agreed upon, the same shall be fixed by three appraisers, one chosen by the retiring partner, one by the remaining partners, and the third by the two so selected. If none of the remaining partners is satisfied to pay the price so fixed, the retiring partner may sell at will to any person, who upon purchasing, shall

become a limited but not a general partner. These conditions shall also apply to and govern the sale of the interest of any deceased or incapacitated limited partner by his or her executor, administrator, trustee, guardian or heir or heirs. In case of the death, retirement or incapacity to act of a general partner, the remaining general partners shall continue the business until such time as the interest of the said general partner can be determined. Such interest may then be withdrawn, or it may then be treated as the interest of a limited partner, on such terms and in such manner as may be agreed upon between such general partner, his estate and the remaining general and limited partners.

7. If the interest of any general partner be sold to a stranger to the partnership, the purchaser shall become a general partner in the retiring partner's place and stead if all of the remaining partners so agree, otherwise his status shall be that of a limited partner under the provisions of the Uniform Limited Partnership Act. If the sale be to a general partner or partners, such interest shall be added to and become a part of his general partnership interest in a share of the partnership assets and business. If the sale be to a limited partner or partners, the purchaser or purchasers shall become a general partner or partners only to the extent of the interest so purchased. If the interest of any limited partner be sold to a general partner or partners, the purchaser or purchasers shall become a limited partner to the extent of the interest so purchased unless the general partners otherwise agree. No general partner shall be permitted to sell his

interest in the partnership unless an arrangement satisfactory to other general partners and to creditors is made covering liability for obligations of the partnership then existing.

8. The general partners shall manage, control and direct the partnership business and affairs, including the determination of the salaries to be paid to each for his services, and such salaries shall be a part of the expenses of operating the business, and no part thereof shall be charged against the "capital" or "profits" accounts of any of such partners. The general partners shall advise with each other in all things pertaining to any business policy, the purchase and sale of any business property, the making of business contracts, the borrowing of money and the signing of promissory notes and other evidences of indebtedness. All contracts, conveyances, notes, checks, drafts, etc., are to be signed by such partner or partners as the majority shall direct. If the majority of the general partners shall be unable to agree, or because of the number of partners no majority is available, then in connection with the matter in controversy the decision shall be controlled by the majority in capital interest of the general partners.

9. The fiscal year of the partnership hereby organized shall end on August 31st of each year. At the end of each fiscal year a general account of the partnership business shall be taken and a report thereof made by the general partners each to the other and to the limited partners. The net profits for each year shall be distributed at such times and in such manner as may be determined upon by the general partners, havin-

in mind the necessities and success of future operations of the business. The general partners may make advancements to any partner on account of his or her share of the profits earned pending the next general accounting and distribution. The annual general accounts or accounting of the partnership shall contain in detail such information as is necessary fully to advise every partner with reference to the affairs of the business and its financial condition.

10. If at any time during the continuance of the partnership, or upon the termination thereof, any dispute, question or difference shall arise between the partners, or any of them, or their representatives, touching the partnership, its accounts or transactions, or its dissolution or winding up, or the construction, meaning or effect of this agreement or otherwise in relation to the premises, then every such dispute shall be referred to the arbitration of three disinterested persons, one to be chosen by each party to the dispute and the third by the two so chosen, and if either party shall neglect or refuse to appoint an arbitrator within fifteen days after the other party shall have made his selection and given notice thereof, then the arbitrator appointed as aforesaid shall, at the request of the party appointing him, proceed to hear and determine the matters in difference as though he were an arbitrator appointed by both parties for the purpose, and the award or determination which shall be made by the said arbitrator or arbitrators shall be final and binding on their respective executors, administrators and assigns.

11. Upon the termination or dissolution of the

partnership, full account of the assets and liabilities of the partnership shall be taken. The assets shall be liquidated as promptly as possible and the proceeds thereof shall be applied as follows:

(a) The payment of the debts and liabilities of the partnership and expenses of the liquidation.

(b) The repayment of the capital contributed by the general and limited partners, or such portion thereof as can be paid out of the assets of the partnership then remaining.

(c) The surplus of any of such assets remaining shall be divided among the partners according to their respective interests therein as herein defined.

13. Each general partner further covenants to give his whole time and attention to the business of the partnership and to use his utmost exertion to promote its success, and that he will not during the continuance of his partnership engage or be interested in any other business whatsoever to an extent that will be detrimental to the best interests of the partnership.

14. If at any time during the continuance of the partnership all of the parties hereto shall desire to change or amend this agreement, they may do so by attaching thereto such supplemental agreement as they may wish to make, the same to be signed by all of the parties hereto, and the same then to become effective as if originally incorporated herein.

IN WITNESS WHEREOF, the parties hereto have executed four original copies of this agreement.

FRANCIS E. TOWER,
HARVEY A. AMIDON,
HAZEL I. TOWER.

U. S. GOVERNMENT PRINTING OFF 1945